

AL-15-000-0987

Congress of the United States

Washington, DC 20510

October 21, 2014

VIA ELECTRONIC TRANSMISSION

Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW,
Room 3426 ARN
Washington, DC 20460

Dear Administrator McCarthy:

A recent Government Accountability Office (GAO) report raises serious concerns about the use of paid administrative leave among 24 federal agencies from fiscal years 2011 to 2013.¹⁷ The report reveals that during this period, agencies spent \$31 million on salaries of employees who were placed on administrative leave for more than one year and more than \$700 million on employees on leave for a month or more.¹⁸

Although administrative leave is not authorized by statute, precedent allows it as an exercise of agency discretion, but only for occasional, short periods of time and only when it is in the best interests of the taxpayer.¹⁹ Placing employees on administrative

¹⁷ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

¹⁸ *Id.*

¹⁹ To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958) (where removal of an employee is necessitated by safety concerns, only 24 hours administrative leave is appropriately authorized, and extensive paid leave pending an investigation does not qualify as a proper use of "administrative leave," but rather "immediate" steps should be taken to reduce time during which an employee is on paid leave); Navy Department-Reduction In Force-Administrative Leave During 30-Day Notice Period, 66 Comp. Gen. 639, 640 (1987) (holding that decisions of the Comptroller General and the guidelines of the Office of Personnel Management limit an agency's discretion to grant administrative leave to situations involving brief absences); Ricardo S. Morado - Excused Absence, 1980 WL 17293, 1 (1980) (when it became clear that an employee would not be returning to work, an agency was not authorized to grant administrative leave pending the separation); Miller v. Department of Defense, 45 M.S.P.R. 263, 266 (MSPB, 1990) (a settlement agreement was declared invalid as the Merit Systems Protection Board determined that the Department of Defense did not have the authority to grant an employee nine months of paid administrative leave, where said employee was to be removed at the end of the period of administrative leave, because there was no statutory provision that authorized the agency to grant paid administrative leave for such an "extended period of time"); *pet. for rehearing denied by Miller v. Dep't of Defense*, 1992 U.S. App. LEXIS 2457 (Fed. Cir. Feb. 18, 1992); In the Matter of the Grant of

leave for extended periods of time raises questions about the potential abuse of administrative leave for time periods and purposes not authorized by law.

GAO has reported that the Environmental Protection Agency placed 2 employees on paid administrative leave for one year or more.²⁰ Given the significant costs to the taxpayer for salaries and benefits paid to these federal workers for not working, it is critical for Congress to understand why each of these employees was on paid leave for such a long time.

Thus, please respond to the following questions:

1. Please provide agency policy on paid administrative leave. If no policy exists, please explain how the agency grants administrative leave, and what controls, if any, are in place to prevent it from being used for extended periods of time. If there are no such safeguards, please explain why not.
2. How many employees were on paid administrative leave for more than one month in Fiscal Year (FY) 2014? What was the total cost to the agency in FY 2014 in salaries and benefits for those employees' paid administrative leave?
3. How many employees are currently on paid administrative leave that have been on such leave for:
 - a. 1-3 months;
 - b. 3-6 months;
 - c. 6-9 months; and

Administrative Leave Under Arbitration Leave, 53 Comp. Gen. 1054, 1056-57 (the Comptroller General refused to grant an employee thirty days of administrative leave, where that employee was injured on the job and unable to work in his full capacity, as the grant of administrative leave constituted an "extended period of excused absence" that was not permitted under any statute); Nina R. Mathews-Age Discrimination/Title VII Resolution Agreement-Compensatory Damages, 1990 WL 278216, 1-2 (where an employee was granted twenty-two weeks of administrative leave pay in settlement of a personnel claim, the agreement was deemed invalid by the GAO, as the Comptroller determined that there was no relevant legal basis by which the employee could be placed on extended administrative leave with pay); Excused Absence for Bar Examination Preparation, 1975 WL 8763, 1 (1975) (periods of 14, 28 and 31 days did not constitute "periods of brief duration" under which an agency had authority to grant administrative leave for employees to take their Bar examinations); Department of Housing and Urban Development Employee-Administrative Leave, 67 Comp. Gen. 126, 128 (1987) (The Comptroller General held that the agency's "decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests"); Frederick W. Merkle, Jr. - Administrative Leave, 1980 WL 14633, 1 (1980) (an eight-week period could not constitute administrative leave for an employee awaiting a decision on his eligibility for early retirement, as it constituted an "extended period of time"); Gladys W. Sutton-Administrative Leave in Lieu of Leave Without Pay, 1983 WL 27142, 1 (a five-week period constituted an "extended period" where administrative leave could not be properly granted by an agency so that an employee could preserve her eligibility for a discontinued service retirement program).

²⁰ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

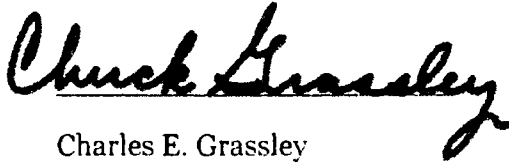
d. 9-12 months.

Do not include an employee in more than one category. For each category, what is the total cost to the agency in salaries and benefits for those employees' paid administrative leave?

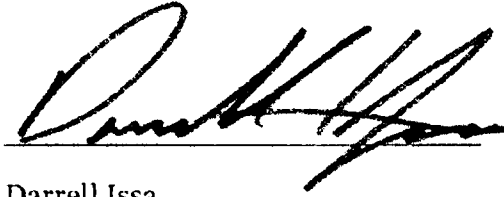
4. Excluding those referenced above, how many employees currently on paid administrative leave have been on such leave for more than a year? What is the total cost to the agency in salaries and benefits for those employees' paid administrative leave?
5. For the employees described in the GAO report as being on paid administrative leave for one year or more, as well as for the employees described above as being currently on administrative leave for more than a year, please provide for each employee a detailed narrative of the circumstances surrounding the extended paid leave, including:
 - a. Position title and GS level.
 - b. Employee division/office/component.
 - c. Total compensation received while on administrative leave.
 - d. Reason for being placed on administrative leave.
 - e. Exact length of time on administrative leave.
 - f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)
 - g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave.
 - h. A full explanation of why the employee was not placed on some form of unpaid leave.

Thank you in advance for your prompt attention to this matter. Should you have any questions regarding this matter, please contact Chris Lucas or Tristan Leavitt for Ranking Member Grassley at (202) 224-5225 and Jennifer Hemingway for Chairman Issa at (202)225-5074.

Sincerely,



Charles E. Grassley
Ranking Member
Judiciary Committee
U.S. Senate



Darrell Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your letter of October 21, 2014 to the U.S. Environmental Protection Agency requesting information regarding the use of administrative leave by agency employees during the period of FY 2011 and FY 2013. The EPA's Administrator has asked that I respond to your inquiry.

We share your concern that administrative leave be used very judiciously and only when it is in the interest of the government. We take this obligation seriously.

We have responded to your specific questions in the enclosed document regarding our policies, use, timeframes and costs of employees placed in leave status. In a small number of cases, the matters regarding the reasons for placement in administrative leave status remain under litigation and our ability to provide extensive details in this letter are limited.

I appreciate your reference to the recent GAO report on this topic. That report found that for the 24 federal agencies/departments they reviewed, there were 252 employees who were in administrative leave status for more than one year from FY 2011 through FY 2013. EPA had only two such employees. For the same agencies/departments reviewed by GAO, there were 22,098 federal employees who were in administrative leave status from one to three months from FY 2011 through FY 2013. EPA had only 50 such employees. During the relevant time periods, the EPA had about 18,000 employees. GAO's report did not characterize EPA's use of administrative leave as excessive or unusual.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Nanci E. Gelb", is positioned above the typed name.

Nanci E. Gelb
Acting Assistant Administrator

Enclosure

cc: The Honorable Patrick J. Leahy
Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

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Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

Nanci E. Gelb
Acting Assistant Administrator

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Member

Enclosure to Information Request from Senator Grassley and Congressman Issa

1. Please provide agency policy on paid administrative leave. If no policy exists, please explain how the agency grants administrative leave, and what controls, if any, are in place to prevent it from being used for extended periods of time. If there are no such safeguards, please explain why not.

Agency policy defines the term "administrative leave" as "[a]n excused absence from duty without loss of pay and without charge to the employee's leave account." Guidance in this policy also states that "[w]hen an employee's removal or indefinite suspension is proposed, and the employee's continued presence at the worksite during the notice period would constitute a threat to public property or the health and safety of coworkers or the public, the employee may be placed on excused absence during the time required to effect the action." This policy has been in effect at the EPA since 1987.

Federal regulations at 5 C.F.R. § 752.404(b) also authorize agencies to place employees in a paid, non-duty status when there is a pending decision on a proposed misconduct-related suspension or removal, "for such time as is necessary to effect the action," if the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests.

2. How many employees were on paid administrative leave for more than one month in Fiscal Year (FY) 2014? What was the total cost to the Agency in FY14 in terms of salaries and benefits for those employees' paid administrative leave?

The Agency has had a total of 32 employees on paid administrative leave for over one month during fiscal year 2014. The total cost to the Agency in terms of salaries and benefits for those employees was \$1,446,907.11.

3. How many employees are currently on paid administrative leave that have been on such leave for:

The information below shows the break-out of employees on paid administrative leave during fiscal year 2014. Total of 15 spread out over the four time periods.

Duration	Number of Employees	Total Cost per Category
a. 1-3 months	15	\$294,568.94
b. 3-6 months	11	\$586,874.08
c. 6-9 months	3	\$238,389.13
d. 9-12 months	1	\$126,187.25

4. Excluding those referenced above, how many employees currently on paid administrative leave have been on such leave for more than a year? What is the total cost to the agency in terms of salaries and benefits for those employees' paid administrative leave?

Enclosure to Information Request from Senator Grassley and Congressman Issa

Excluding the employees reflected above in response to question #3, the Agency currently has one employee who has been on administrative leave for more than a year. The total costs¹ in terms of salary and benefits for this employee is \$366,892.96.

5. For each of the employees described in the GAO report as being on paid administrative leave for one year or more, as well as for the employees described above as being on administrative leave for more than a year, please provide for each employee a detailed narrative of the circumstances surrounding the extensive paid leave, including:

- a. Position title and GS level.**
- b. Employee division/ office/ component.**
- c. Total compensation received while on administrative leave.**
- d. Reason for being placed on administrative leave.**
- e. Exact length of time on administrative leave.**
- f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)**
- g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave.**
- h. A full explanation of why the employee was not placed on some form of unpaid leave.**

While the GAO did not identify the employees counted in its report, our review of agency records indicates that the information below describes those employees.

Employee #1

a. Position title and GS level:	The employee is an Environmental Scientist at the GS-13 level.
b. Employee division/office/ component:	Office of Solid Waste and Emergency Response.
c. Total compensation received while on administrative leave	The employee has received \$366,892.96 in total compensation while on administrative leave.
d. Reason for being placed on administrative leave.	The employee was placed on administrative leave as part of an ongoing personnel matter.
e. Exact length of time on administrative leave.	The employee has been on administrative leave for 5953 hours.
f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)	Administrative leave.

¹ As of the end of FY2014

Enclosure to Information Request from Senator Grassley and Congressman Issa

g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave

The Agency determined that reassigning the employee to other duties could be potentially disruptive and/or impractical under the circumstances.

h. A full explanation of why the employee was not placed on some form of unpaid leave.

The Agency's response to this question applies to all three of these employees and appears at the end of this document.

Employee #2

a. Position title and GS level:

The employee was a Public Affairs Specialist at the GS-12 level.

b. Employee division/office/component:

Region 4 (Atlanta).

c. Total compensation received while on administrative leave

The employee received \$106,378.24 in total compensation while on administrative leave.

d. Reason for being placed on administrative leave.

The employee was placed on administrative leave as part of a personnel matter.

e. Exact length of time on administrative leave.

The employee was on administrative leave for 2,292 hours.

f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)

The employee was removed from Federal service effective November 14, 2014.

g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave.

The Agency determined that reassigning the employee to other duties could be potentially disruptive and/or impractical under the circumstances.

h. A full explanation of why the employee was not placed on some form of unpaid leave.

The Agency's response to this question applies to all three of these employees and appears at the end of this document.

Employee #3

a. Position title and GS level:

The employee was an Environmental Scientist at the GS-13 level.

Enclosure to Information Request from Senator Grassley and Congressman Issa

b. Employee division/ office/component:	Region 6 (Dallas).
c. Total compensation received while on administrative leave	The employee received \$367,502.12 in total compensation while on administrative leave.
d. Reason for being placed on administrative leave.	The employee was placed on administrative leave as part of a personnel matter.
e. Exact length of time on administrative leave.	The employee was on administrative leave for 5,262 hours.
f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)	The employee left the Agency on July 8, 2014, in accordance with the terms of a settlement agreement.
g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave	The Agency determined that reassigning the employee to other duties could be potentially disruptive and/or impractical under the circumstances.
h. A full explanation of why the employee was not placed on some form of unpaid leave.	The Agency's response to this question applies to all three of these employees and appears at the end of this document.

h. A full explanation of why the employee was not placed on some form of unpaid leave.

There are three different types of employee unpaid status: an indefinite suspension; Leave Without Pay (LWOP); and Absent Without Leave (AWOL). None of these were options the Agency could have used as an alternative to placing these three employees on administrative leave.

The first non pay status – placing the employee on an indefinite suspension in situations involving employee misconduct – is only permissible in instances where an agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment could be imposed, pending the outcome of a criminal proceeding or any subsequent agency action following the conclusion of the criminal process. None of the employees listed above were subject to criminal proceedings. Consequently placing these employees on indefinite suspensions was not a valid option for management's consideration.

The employees did not meet the criteria for LWOP. LWOP is an employee-initiated leave option, subject to management approval. Generally, agencies cannot place an employee on LWOP involuntarily.

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AWOL applies when an employee is absent from work without having the absence approved by their supervisor. In these cases the supervisor may place the employee on AWOL. The circumstances of these cases did not meet the requirement for AWOL.